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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/698,191

10/31/2003

Donald E. Weder

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30589

7590

11/03/2005

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EXAMINER

AUGHENBAUGH, WALTER

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/698,191

Applicant(s)

WEDER ET AL.

Examiner

Walter B. Aughenbaugh

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1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>103103</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 1 and 2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: the relationships between the “first bottom fold” (line 13 of claim) and the cover or container and between the “second bottom fold” (line 14 of claim) and the cover or container. It is unclear if these folds are a component of the cover or container and if these folds are present in the final product: the “formed by...” recitation of lines 13-15 only indicates that the folds are present during formation of the product and does not require that the folds are an actual component of an intermediate, let alone final, product. A “first bottom fold” of what? A “second bottom fold” of what?

In regard to claim 2, the location of the “upper edge[s]” on the second, third and fourth folded portions cannot be ascertained because the orientation of the folded portions cannot be ascertained.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Weder et al.

Weder et al. teach a decorative cover (col. 3, lines 49-50) constructed from a flat sheet of material (col. 7, lines 58-63 and col. 3, lines 1-3) comprising a base portion (base, item 26, Fig. 3A) and a skirt portion (decorative border, item 34, which includes petal-like portions, item 36, Fig. 3A) extending from the base portion (col. 3, lines 1-16 and Fig. 3A). Since the base, item 26, includes a plurality of folds 42 (col. 3, lines 49-54), the base, item 26, has a flattened condition and is in a flattened state. The base, item 26, is openable to an opened position exposing an interior space since a plurality of the decorative covers 14 are stackable (see lower left-hand corner of Fig. 7A). The base, item 26, comprises a first folded portion, a second folded portion adjacent the first folded portion, a third folded portion adjacent to and covering the second folded portion, and a fourth folded portion adjacent to and covering a portion of the third folded portion (four of the overlapping folds, item 42, Fig. 3A, correspond to the claimed folded portions, col. 3, lines 49-54). Weder et al. teach that the fourth folded portion is bondingly connected to a portion of the third folded portion via a bonding material (col. 4, lines 28-33) and that the base portion (base, item 26, Fig. 3A) has a bottom (Fig. 3). The recitation “formed by connecting a first bottom fold and a second bottom fold to a portion of a lower end of the base portion via a bottom fold securing element” is a method limitation that has not been given patentable weight since the method of forming the cover is not germane to the issue of patentability of the cover itself.

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In regard to claim 2, since the structure intended to be recited cannot be ascertained for the reasons provided above in the 35 U.S.C. 112 rejection of claim 2, the claim cannot be treated on its merits.

In regard to claim 3, Weder et al. teach that the bonding material is an adhesive material or a heat sealing material (col. 5, lines 31-59).

In regard to claim 4, Weder et al. teach that the sheet of material is constructed from polymeric film that is also plastic (col. 2, lines 19-28).

In regard to claim 5, Weder et al. teach that the base portion, item 26, has a frustoconical shape (Fig. 3A and 3B):

In regard to claim 6, Weder et al. teach that the skirt portion (decorative border, item 34, which includes petal-like portions, item 36) has a non-linear edge (Fig. 3A) since edge of the skirt portion is not linear, but zig-zags three-dimensionally.

Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is to 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications


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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh

10/28/05

WBA


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

10/31/05